IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4186 of 1988

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JUBEDABEN ALARKHABHAI SANDHI

Versus

BHAVNAGAR DIST PANCHAYAT

Appearance:

1. Special Civil Application No. 4186 of 1988

MR RJ OZA for Petitioner No. 1

RULE SERVED for Respondent No. 1-2

MR KETAN A DAVE for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 17/02/2004

ORAL JUDGEMENT

Heard learned advocate Mr. R.J. Oza for the

petitioner and Mr. Ketan A. Dave, learned advocate for the respondent NO.3 Gram Panchayat. Notice of rule issued by this Court has been served upon respondents no.1 and 2 but the respondents no.1 and 2 have not appeared before this Court either in person or through an advocate. Therefore, considering that it is a matter of the year 1988 and also considering the fact that the respondents no.1 and 2 have been served, this Court has taken up the present matter for consideration in absence of respondent no.1 and 2.

Brief facts of the present petition are to the effect that initially the petitioner was appointed by order dated 3.8.1973 as a Sanchalika for a period of two months as one another Sanchalika Rasilaben had proceeded on leave for a period of two months. Thereafter, said Sanchalika Rasilaben, due to her marriage, had left the job and in her place, the petitioner was appointed by the respondent NO.3 vide appointment order dated 1st February, 1974 subject to certain terms and conditions. As per the order of appointment, her services were considered as temporary which can be terminated without notice in a fixed salary of Rs.103.00 and the petitioner was not entitled to any other allowances such as Dearness Allowance and other allowances. On 20th November, 1981, the State Government in its Social Welfare Scheduled Tribe Development Department has issued one Circular wherein item no.4 was providing that in panchayat, in sewing class, one post of Sanchalika has to be filled in in the pay scale of Rs.330-530 and accordingly, sanction has been given by the State Government and the period has been specified that such post is required to be filled up prior to 20th February, 1982. As per Item No. 7, the expenses must have to be borne in budgetary expenses of social and welfare department. On the basis of the said Government Resolution, one application was submitted by the petitioner dated 7th October, 1983 to the respondent No. 3 with all details and her application was forwarded to the TDO Umrala to take appropriate decision as to whether the petitioner is entitled for the benefit of the said GR or not. Then, respondent No.3 has taken decision not to decide this matter further and to keep it pending by order dated 1st December, 1983. Then, again the petitioner made an application on 23rd July, 1984 to the DDO, District Panchayat, Bhavnagar to consider her case for regular salary as per the Government Resolution. The grievance of the petitioner is to the effect that the respondent No.3 has closed the sewing class on 30.7.1988 and from 1st August, 1988, her services have been terminated. The respondent No.3 has filed affidavit in reply also stating the same thing that the sewing class

has been closed with effect from 30th July, 1988.

Learned advocate Mr. R.J. Oza appearing for the petitioner has submitted that the petitioner may not successfully challenge the order of termination as the sewing class has been closed with effect from 30.8.1988 but at least the petitioner is entitled for the regular scale of Rs.330-530 as per the said GR dated 20.11.1981. For that, learned advocate Mr. Oza submits that her application in that regard is still pending and no decision has so far been taken by the district Panchayat concerned on that application. Therefore, it was his request to issue some suitable directions to the respondent No.1 to examine the said application of the petitioner in light of the GR dated 20.11.1981 and to pass appropriate well reasoned speaking order as to whether the petitioner is entitled for the scale of Rs.330-530 on the basis of the said GR or not with effect from the date on which the said circular came into effect. He has also clarified that she is entitled for the regular scale only upto the date of closure of the sewing class 30.8.1988. On the other hand, learned advocate Mr. Ketan A. Dave appearing for the respondent No.3 Gram Panchayat has submitted that the respondent NO.3 was running the sewing classes on the basis of its own funds and not on the basis of any grant from the State Government or the District Panchayat. According to his submission, ultimately, decision will have to be taken by the District Panchayat, Bhavnagar and if some suitable directions will be issued by this court, then, the District Panchayat concerned will consider the same by passing appropriate orders in accordance with law.

In view of these facts emerging from the record, it is directed to the respondent No.1 Bhavnagar District Panchayat, Bhavnagar to consider the application submitted by the petitioner dated 23.7.1984, addressed to the DDO, District Panchayat, Bhavnagar (Annexure-E page 39 to the petition) in light of the GR dated 20.11.1981 and to decide as to whether the petitioner is entitled for the regular scale of Rs.330-530 or not for a period from the date of the effect of the said GR till the date of closure of the sewing classes i.e. 30.8.1988 and to pass appropriate well reasoned speaking order after giving opportunity of hearing to the petitioner, within three months from the date of receipt of copy of this order. It is made clear that while issuing the GR dated 20.11.1981, provision has been made to meet with such expenditure as per Item No. 7 of the GR dated 20.11.1981 in the Budgetary Head Expenses, must have to be borne by the Government and ultimately, if the regular scale for

the aforesaid period is required to be given to the petitioner, then, the District Panchayat will be at liberty to ask the Government to make payment as per item no. 7 of the GR dated 20.11.1981. In that event, the District Panchayat concerned will move the Government for the said purpose immediately. With these directions, this petition is disposed of. Rule is discharged with no order as to costs.

Dt. 17.2.2004. (H.K. Rathod,J.)

Vyas